IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI JUSTICE R.SUBHASH REDDY

-

WRIT PETITION NO : 3750 of 1996

Between:

Smt. V. Saraswathi W/o. Venkat Rao
H.No.8-3-667/1, Yellareddyguda
Hyderabad

..... PETITIONER

AND

1 The Dist. Collector,
Eluru, E.G.Dist.
2 The Revenue Divisional Officer
Kakinada, E.G.Dist.
3 The Mandal Revenue Officer(Rural)
Kakinada, E.G.Dist.
4 The Dist.Manager, A.P.S.H.C.Ltd.,
Kakinada, E.G.Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order or orders, direction or directions, writ or writs, particularly one in the nature of writ of Mandamus and to declare the action of the respondents in taking possession of the land in Survey No..297/1 to the extent of Ac.2.50 cents of Tammapuram (v), Kakinada (M), E.G.Dist., to allot house site pattas to the poor people, as illegal violative of Art 300A of Constitution of India and to pass

Counsel for the Petitioner: MR.K.L.N.SWAMY

Counsel for the Respondent Nos. 1to 3: GP FOR REVENUE

Counsel for the Respondent No.4 :

The Court made the following :

ORDER:

This writ petition is filed seeking a writ of Mandamus, to declare the action of the respondents in taking possession of the land in R.S. No. 297/1in an extent of Ac 2.50 cents situated at Thammavaram village, Kakinada Mandal of East Godavari District as illegal and arbitrary.

2. In the affidavit, filed in support of the writ petition, it is stated that the petitioner is only a possessor of the land admeasuring Ac 2.50 cents in R.S.No.297/1 at Thammavaram village, kakinada Mandal, having purchased the same under a registered sale deed dated 02-6-1982 from its previous owner and possessor Sri D.M. Narayana Rao. It is further stated that in the year 1990, the Gas Authority of India Limited (herein after referred to as 'GAIL') laid a pipeline through the land of petitioner and in that regard compensation was also paid to him only for utilization of the land. It is further stated that though the lands were utilized for laying pipeline, the ownership of the lands remained with the owners of the land prohibiting them from using it for certain purposes like digging well etc. Thus, the petitioner is in possession and enjoyment of the land. The petitioner was also served with a notice issued by the Special Deputy Collector, Land Acquisition, GAIL, under section 6(1) of the Petroleum and Mineral Pipeline Act (Act 50 of 1962). It is further stated that though no orders are passed against him, the respondents are interfering with his possession on the ground that the land is required for public purpose. Hence, the writ petition.

3. In the counter affidavit filed on behalf of the respondents, it is stated that the said land was originally assigned to Sri D.M. Narayana Rao by issuing "d" Form patta in the year 1972. It is also stated that as much as the said land is an assigned land, the sale of the land by the assignee in favour of the petitioner is a violation of the

provisions of A.P. Assigned Lands Prohibition of Transfer Act, 1977. It is further stated that as there was a requisition of land in an extent of Ac 111-71 cents by the Naval Department for defence purposes, by issuing notice to the original assignees, the land was resumed and compensation was paid.

4. Heard the learned counsel for the petitioner and learned Government Pleader for Revenue.

5. As seen from the record it is observed that at the stage of admission, this Court has passed the interim orders directing stay of all further proceedings including taking possession of the land from the petitioner. The said order is continued all along during the pendency of the writ petition. It is not denied in the counter affidavit about the purchase of the land through a registered sale deed in the year 1982 as claimed by the petitioner. As much as the petitioner has purchased the said land from D.M. Narayana Rao, in the year 1982, the said land cannot be resumed by issuing notice to the vendor of the petitioner. Even as per the averments in the counter affidavit, no order has been passed for eviction of the petitioner either on the ground that the said land was sold in violation of the conditions of the patta or in violation of the provisions of A.P. Assigned Lands Prohibition of Transfer Act, 1977. If the transfer is in violation of the said provisions, it is for the competent authority to initiate proceedings and pass appropriate orders as per the provisions contemplated in the Act. As much as the transfer of land is by way of registered sale deed even in the year 1982, the petitioner cannot be evicted unless a specific order is passed against him as per the procedure contemplated under A.P. Assigned Lands Prohibition of Transfer Act, 1977. Though it is stated in the counter affidavit that possession of the land is taken, but it appears from the notice issued to the petitioner in the year 1990 by the GAIL that the petitioner is in possession of the land. Further, the interim order passed by this Court is continued all along during the pendency of the writ petition.

6. As much as no order of eviction is passed against the petitioner, I dispose of the writ petition directing the respondents not to interfere with the possession of the land in dispute by the petitioner. However, this order will not preclude the respondents from taking steps under A.P. Assigned Lands Prohibition of transfer Act, 1977.

7. The writ petition is allowed to the extent indicated above. No order as to costs.

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15th February 2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Tuesday, the Fifteenth day of February Two thousand and five.

Asst. Registrar

To

1 The Dist. Collector,
Eluru, E.G.Dist.
2 The Revenue Divisional Officer
Kakinada, E.G.Dist.

3 The Mandal Revenue Officer(Rural)
Kakinada, E.G.Dist.
4 The Dist.Manager, A.P.S.H.C.Ltd.,
Kakinada, E.G.Dist.

5 Two CCs to GP for Revenue, High Court Buildings, Hyderabad (OUT)

6. Two CD copies.

HON'BLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION NO. 3750 OF 1996

15th FEBRUARY 2005